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 TRAFFICSCHOOL.COM, INC. and
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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

TRAFFICSCHOOL.COM, INC.,
 a California corporation; DRIVERS ED
 DIRECT, LLC, a California limited
 liability company,

Plaintiffs,

vs.

EDRIVER, INC., ONLINE GURU, INC.,
 FIND MY SPECIALIST, INC., and
 SERIOUSNET, INC., California
 corporations; RAVI K. LAHOTI, an
 individual; RAJ LAHOTI, an individual;
 and DOES 1 through 10,

Defendants.

) Case No. CV 06-7561 PA (CWx)

) The Honorable Percy Anderson

) **PLAINTIFFS' OBJECTIONS TO**
) **FORM OF COURT'S PROPOSED**
) **PERMANENT INJUNCTION**

) Findings of Fact and Conclusions of Law
) and Order Finding Defendants Liable for
) False Advertising and [Proposed]
) Judgment and Permanent Injunction:

) Filed June 4, 2008

1 **I. Overview of Plaintiffs’ Objections to Court’s [Proposed] Judgment and**
2 **Permanent Injunction**

3 In the Court’s Findings of Fact and Conclusions of Law and Order Finding
4 Defendants Liable for False Advertising and [Proposed] Judgment and Permanent
5 Injunction (hereafter “Findings” and “Injunction”), the Court allowed the parties ten
6 days “to file any objections to *the form of the Court’s proposed permanent injunction.*”
7 (Emphasis added).^{1/} Plaintiffs seek to ensure that the Court’s intent to rectify and
8 prevent the false advertising – clearly expressed in pages 28-30 of its Findings – is
9 sufficiently translated into the Injunction language, leaving no room for Defendants to
10 circumvent that intent, including by claims that the Injunction is ambiguous in certain
11 respects.

12 Plaintiffs have reason to believe that Defendants (self-professed online marketing
13 experts) will attempt to lessen the impact of the Injunction as much as possible, and will
14 try to use every means possible to continue to benefit from the false advertising “good-
15 will” that they have developed in their marketing and branding of DMV.ORG. Indeed,
16 attached as Exhibit A are recent screen-shots of DMV.ORG which reflect what appears
17 to be testing by Defendants of various splash screens subsequent to the Court’s issued
18 Findings on June 4, 2008. These exemplars show that Defendants are apparently
19 intending to: (1) brand the splash screen with their DMV.ORG license plate logo; (2)
20 use marketing text on the page such as “We answer your DMV Questions on-line so
21 you don’t have to stand in-line”; and (3) possibly display the DMV.ORG website in the
22 background as a faint image, among other things.

23 ///

24
25 ^{1/} Plaintiffs respect that the Court has already decided on the type of
26 injunction it will order (i.e., an intercept page rather than a divestiture of the domain
27 name DMV.ORG), and therefore will not argue herein for other types of injunctive
28 relief. However, Plaintiffs anticipate that Defendants may do just the opposite and
attempt to present evidence or arguments as to why an intercept page should not be
ordered. Any such attempt is beyond the scope of this Court’s order, which calls for
objections to the form of the *proposed injunction* (i.e., the language itself).

1 While Plaintiffs do not know what Defendants are thinking, it is quite possible
2 that Defendants believe that either one of the exemplars in Exhibit A satisfies the
3 language in the Court's proposed Injunction. These exemplars fit within the Defendants'
4 ongoing pattern of deceptive conduct. Specifically, the test splash screens are heavily
5 branded and de-emphasize to an extreme degree the intercept message while overtly
6 enhancing the likelihood that visitors will click the large and inviting "continue" button
7 without reviewing the intercept message. As this was clearly not the Court's intent for
8 a remedy as expressed extensively in its Findings, Plaintiffs feel it is critical to ensure
9 that the Court's intent is observed and that deception no longer continues at the hands
10 of creative efforts by Defendants to design around the intent of the Injunction.

11 To prevent this, and pursuant to Fed. R. Civ. Pro. 65's mandate that an injunction
12 must "state its terms specifically" and "describe in reasonable detail . . . the act or acts
13 restrained or required," Plaintiffs propose the revisions discussed herein to the
14 Injunction. Plaintiffs also submit a redlined version of the Injunction tracking proposed
15 changes [Exhibit B] and a final [proposed] version of the Injunction incorporating the
16 redlined changes [Exhibit C].

17 **II. There Should be No Branding or Marketing of DMV.ORG on the Splash**
18 **Screen – It Should Serve Its Sole Purpose as An Interceptor Ordered by**
19 **the Court as a Remedy to a False Advertising Liability Finding**

20 Without requiring Defendants to divest themselves of the DMV.ORG name or to
21 change their search engine marketing practices, the Court aptly recognized that only an
22 acknowledgment page or "splash screen" intercept would be sufficient to cure any
23 existing or imminent confusion in the minds of visitors to DMV.ORG. Specifically, the
24 Court found that confusion may already exist when visitors reach DMV.ORG because
25 of the Defendants' search engine marketing, stating: "This suggests that some
26 consumers are confused before even viewing Defendants' website. Therefore, the
27 Court finds that injunctive relief must be sufficient to remedy any confusion that
28 consumers have already developed before visiting the DMV.ORG website for the first

1 time.” [Findings, pg. 29:5-10.] Likewise, the Court found that an interceptor was the
2 only way to ensure that visitors who email DMV.ORG do so only after being fully
3 advised that they are visiting a private website, noting that “[s]ome members of the
4 public are emailing extremely sensitive information to Defendants in the belief that
5 Defendants are a state agency.” [Findings, pg. 28:18-21].

6 However, to be effective as a remedy for a finding of false advertising liability,
7 the acknowledgment page or interceptor should be just that –and *nothing* more. It
8 should *not* allow the DMV.ORG website to flash before the visitor’s eyes before it
9 appears.^{2/} It should *not* be another marketing vehicle for Defendants by being branded
10 with the DMV.ORG license plate logo or contain any slogan such as “Welcome to
11 DMV.ORG. We answer your DMV Questions on-line so you don’t have to stand in-
12 line.” It should *not* allow Defendants to display the DMV.ORG website ever so faintly
13 in the background. It should *not* be that the “continue” click-through button is larger
14 and more prominent than the rest of the disclaiming text. [See, Exhibit A examples of
15 Defendants’ testing.] It should *not* allow the public to erroneously think that the
16 Defendants are voluntarily agreed to post it.

17 Accordingly, the Injunction should be clarified as follows (for the Court’s
18 convenience, specific edits to the Court’s own proposed Injunction – which follow
19 these guidelines and add additional clarifying language – are submitted in the form of a
20 “redlined” version of the Injunction submitted as Exhibit B):

- 21 • The splash screen shall be viewable *immediately* and *prior to any* viewing of the
22 DMV.ORG website. It should not contain any branding or excess wording or
23 logos other than what the Court has proposed, and the DMV.ORG website
24 cannot appear anywhere in the background image (even faintly) of the splash
25 screen.

26
27 ^{2/} Plaintiffs noticed during Defendants’ recent testing of a splash screen that
28 when a user typed in “dmv.org” into a browser or entered through a search link, the
DMV.ORG website would appear first, albeit momentarily, before any splash screen
appeared.

- 1 • All fonts used throughout the entire page of the splash screen, including those in
2 the continue button, drop-down menus, etc., should be in black color and be of
3 the same font *type*, *size*, and *boldness* (except that certain words should be
4 bolded and underlined as proposed by the Court).
- 5 • The continue button graphic shall not be disproportionately larger than the other
6 text on the site or the drop-down menu.
- 7 • For clarity to the visitor (who may know their state’s “motor vehicle regulatory
8 agency” to be called DMV or Department of Motor Vehicles), the statement
9 under the continue button should read: “If you intended to visit your state’s DMV
10 or motor vehicle regulating agency, choose your state below to be redirected.”
- 11 • The acknowledgment language should include that the DMV.ORG website is “for
12 profit.”
- 13 • The drop down menu, like the continue button, should appear on all computer
14 monitors without a visitor having to scroll down.
- 15 • The splash screen should have the text: “This acknowledgment page is mandated
16 by a Federal Court ruling.”

17 **III. Technical Means Should Not Be Used to Circumvent the Intent of the** 18 **Injunction and the Injunction Should Specifically Enjoin Such Means**

19 Plaintiffs noticed during Defendants’ recent testing of sample splash screens that
20 after one visit to the DMV.ORG site where the sample splash page was presented, a
21 repeat visit to the site from the same computer did not display the splash page again.^{3/}
22 This example highlights how Defendants may try to circumvent the actual intent of the
23 order.

24 For example, Defendants may interpret the phrase “every visitor”, as currently
25 worded in the Court’s proposed Injunction, item “(a)”, to mean every unique *computer*

27 ^{3/} Presumably, a “cookie” or other technical means was used for DMV.ORG
28 to recognize a repeat visit by the same computer, and therefore prevent another display
of the splash screen.

1 visiting the site. It is Plaintiffs' position that while each visitor should not be required
2 to see the splash screen every time they navigate to different pages *within* DMV.ORG,
3 each time a visitor attempts to enter any DMV.ORG page (even if from a computer
4 which previously visited the site), that visitor should see the splash screen. This is
5 justified because many families may use only one computer and may have more than
6 one teenager or adult looking for DMV information, and so multiple persons using the
7 same computer should all be presented with the splash page before entering the website,
8 even on subsequent visits.^{4/} According, the proposed revised language of the Injunction
9 makes clear that the splash page must be seen by each visitor once *upon each visit*.

10 Moreover, the language of the Injunction should prohibit other practices that may
11 be used by Defendants to circumvent the intent of the Court's rulings. Specifically, the
12 Injunction should make clear that the splash screen should be utilized prior to any entry
13 of both the DMV.ORG domain name and *website*. This is to prevent Defendants from
14 using the exact website content, with DMV.ORG branding, which was found to be
15 false advertising, with another domain altogether and thus argue that the splash screen
16 need not be employed because it is technically not the "dmv.org" domain (even though
17 the user is confronted with the same misleading DMV.ORG branded website.)

18 In addition, when a visitor reads the splash screen and chooses to use the drop-
19 down menu to be redirected to their state's DMV homepage, Defendants should not be
20 allowed to: (1) display any further messages, advertisements, or other communications
21 to the visitor before the user is directed to their state's DMV website; and (2) collect
22 any identifying information (e.g., IP addresses or emails) or use any tracking devices
23 (e.g., cookies) to then solicit or otherwise contact the visitors that selected to go
24

25 ^{4/} This is also supported by the Court's Findings that the splash page must
26 communicate to *all visitors* to *all entry pages* of DMV.ORG that the website is privately
27 owned because "injunctive relief must be sufficient to eliminate confusion from all
28 members of the public, not just those that might otherwise use Plaintiffs' services" and
that it also "must be sufficient to prevent confusion among DMV.ORG's consumers,
may of whom are likely to be teenagers looking to obtain a learner's permit." [Findings,
pg. 29:10-22.]

immediately to their state's DMV website. Again, Defendants should not benefit in any way from a visit by a user who was actually intending to go to their state's DMV website.

IV. Conclusion

For all the foregoing reasons, Plaintiffs respectfully request the Court enter the proposed judgment and injunction against Defendants in the form (or substantially the form) submitted as Exhibit C.

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